

School of Medicine in Indianapolis. Surviving are his wife, Mary Ann; two daughters, Jennifer Rosenkranz of Reno, Nev., and Alicia Jordan of Nashville, Tenn.; a son, Stephen of Nashville; a stepdaughter, Andrea Tone of Fort Wayne; a stepson, Alex Tone of Fort Wayne; his mother, Ruth L. Wissman of Fort Wayne; two brothers, William W. of Indianapolis and Gary L. of Fort Wayne; a sister, Karen Lewis of Fort Wayne; and a grandchild. Services at 11:30 a.m. Thursday at St. Charles Borromeo Catholic Church, 4916 Trier Road, with calling an hour before services. Calling also from 2 to 8 p.m. Wednesday at D.O. McComb & sons Maplewood Park Funeral Home, 4017 Maplecrest Road. Burial in Catholic Cemetery. Memorials to Bishop Dwenger High School Tuition Assistance or Ryan Kanning Muscular Dystrophy Fund.

THE INTRODUCTION OF THE ESOP PROMOTION ACT OF 1999

HON. CASS BALLENGER

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 10, 1999

Mr. BALLENGER. Mr. Speaker, I come before the House today to introduce legislation to promote more employee ownership in America. I believe this is a modest proposal which can be deemed technical and clarifying in many respects. Entitled the "ESOP Promotion Act of 1999," this bill builds on legislation I introduced in the 102nd, 103rd, 104th and 105th Congresses with bipartisan support. Nearly 100 sitting members of this House have cosponsored this legislation over the years and, if former members are included, the number is over 200.

Mr. Speaker, let me point out that the last Congress aided the creation of employee ownership through Employee Stock Ownership Plans (or ESOPs) by enabling a Subchapter S corporation to sponsor an ESOP. This provision was added to the Balanced Budget Act of 1997 (Public Law 105-34) by Senator JOHN BREAU in the Senate Finance Committee and has been part of my ESOP bills since 1990. The effort to have these small businesses offer employee ownership to their employees started in 1987. Many private sector groups, representing both professionals and businesses, have supported permitting Subchapter S corporations to sponsor ESOPs. I am grateful to my colleagues for their support of this important change in the code.

I encourage my colleagues in the 106th Congress to stand up for employee ownership and enhance the positive record for one of the most encouraging economic trends in America today—ownership by employees of stock in the companies where they work through an ESOP. As many of my colleagues know, I came to Congress first and foremost with a small business background, having created an ESOP plan for the company I founded over 40 years ago. The ESOP provides a method for current owners of stock to sell, at fair market value, their stock to a trust that holds the stock for eventual distribution to employees upon their death, disability or retirement. I believe the employee ownership which we promoted at my company will continue to be a valuable retirement asset for our employees and their families for years to come.

I believe that employee ownership, properly managed, creates a win-win situation for all involved. America and our economic system benefit as we increase competitiveness through employee ownership and provide more opportunity for ownership for those who, frankly, would not have much of a chance to acquire stock ownership otherwise. Since 1989, the House has shown strong support for ESOPs, and I think it is important to confirm this support in the 106th Congress.

Allow me to explain each section of my bill:

Section 1: Names the bill "The ESOP Promotion Act of 1999."

Section 2: Current law permits a corporate deduction for dividends paid on ESOP stock that are passed through to the employees in cash or used to pay the ESOP stock acquisition debt [Internal Revenue Code Section 404(k)]. Section 2 would amend Section 404(k) to permit the deduction if the employees participating in the ESOP are allowed, as their choice, to have the dividend reinvested in more employer stock. In fact, current ESOP and 401(k) sponsors can nearly accomplish the same result under current law with a convoluted system that requires an IRS letter ruling.

Why is this simplification? Because under very complex chain of events which the IRS has approved in a series of letter rulings, the employee can have "constructive receipt" of the cash dividend, and then "constructively" take the dividend money back to the payroll office and reinvest it. Since the employee has received the dividend in cash, the deduction is allowed, although in reality it was reinvested. This legislation says cut to the chase. Where the employee has made clear a desire for the dividends to be reinvested, why have an expensive, confusing system that the IRS has to review after the ESOP sponsor spends dollars on designing the new system? The ESOP sponsor can put these resources to more productive use, and the employees can put their dividends to use in further bolstering their retirement savings with this change.

Section 3: From 1984 until 1989, an estate with share of certain closely-held corporation could transfer stock in the corporation to the corporation's ESOP, and the ESOP would assume the estate tax liability on the value of the transferred stock [former Internal Revenue Code Section 2210]. Unfortunately, the Tax Act of 1989 repealed this law which was an effective way to create more employee ownership. The proposed legislation would restore this incentive for stock to be transferred to an ESOP. No estate tax is being avoided here, it is just shifted from the estate to an American, closely-held corporation that has employee ownership through an ESOP.

Section 4: This section would current what I believe is an anomaly in the current law. Internal Revenue Code Section 1042 provides that if a seller of closely-held stock reinvests his/her proceeds from the sale in the equities of a U.S. operating corporation, the gain on the sale to the ESOP is deferred until the replacement property is disposed of, if and only if the ESOP holds at least 30% of the outstanding shares of the corporation when the sale of stock to the ESOP is completed. This provision of current law plays a major role in the creation of over 50% of the ESOP compa-

nies in America. Current law benefits owners, founders, and outside investors of closely-held companies, but it does not permit holders of stock in a closely-held corporation who acquired the stock as a condition of employment, from a plan other than an ERISA plan, to sell that stock to an ESOP and receive a deferral of the tax on the gain. Section 4 would end the different treatment for shares acquired from a compensation arrangement as a condition of employment compared to stock acquired otherwise.

Section 4 would expand the list of permissible reinvestment to U.S. mutual funds that represent U.S. operating corporation securities. This change would apply to an owner-founder or outside investor, as well as an individual who acquired the stock as a condition of employment.

Section 4 also would correct another technical anomaly in current law. As presently written, Section 1042 provides that any holder of 25% or more of any class of stock in a company cannot participate in an ESOP established with stock acquired in a Section 1042 transaction. My bill would change the measure so that the 25% would be measured by the voting power of the stock, or the value of the stock in terms of total corporate value. This kind of measure is used in other sections of the code.

Section 5: Amends the Internal Revenue Code of 1986 to permit limited distributions from ESOPs, without incurring a 10-percent penalty on early withdrawals, for high education expenses and first-time home purchases. The limitations relate to how much can be distributed and a requirement that the person have at least five years of participation before making the request for the distribution. The early withdrawal provision would be discretionary with the plan sponsor.

I urge those of my colleagues who want to encourage employee ownership in America to join me by cosponsoring the "ESOP Promotion Act of 1999" and working hard to include these provisions in the tax bill that will soon be considered by the House Ways and Means Committee.

TRIBUTE TO JAMES HARRISON

HON. MARION BERRY

OF ARKANSAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 10, 1999

Mr. BERRY. Mr. Speaker, I rise today to pay tribute to a fine young man who resided in the 1st Congressional District of Arkansas and was taken from this world last week, James Harrison from Paragould. A bass-baritone, James was a singer at Ouachita Baptist University, and was returning on Flight 1420 from a choir tour in Germany and Austria.

Although James was only 21, he certainly lived a wonderful life. He was a responsible, trustworthy person. His love and concern for others very likely could have cost him his life.

Along with his contributions to the Ouachita Singers, James was the music minister at First Baptist Church of Royal. His friends say he could look at any piece of music and sing it. He played the guitar and saxophone and was in